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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/457,466	12/08/1999	BRAD HANDLER	003801.P004	7716

7590 10/25/2002

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EXAMINER

ELISCA, PIERRE E

ART UNIT

PAPER NUMBER

3621

DATE MAILED: 10/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/457,466	Applicant(s) Brad, Handler
Examiner Pierre E. Elisca	Art Unit 3621



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 8/19/2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

4) Claim(s) 1-6 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 4-6 is/are allowed.

6) Claim(s) 1 AND 2 is/are rejected.

7) Claim(s) 3 is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) All b) Some* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 19

4) Interview Summary (PTO-413) Paper No(s). _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

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Examiner Pierre Eddy Elisca
United States Department of Commerce
Patent and Trademark Office
Washington, D.C. 20231

DETAILED ACTION

Response to Amendment

1. This Office action is in response to Applicant's amendment, filed on 8/22/2002.

2. Claims 1-6 are pending.

Claim Rejections - 35 USC § 103

3. **The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:**

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 1and 2 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Fisher et al. (U.S. Pat. No. 6,243,691) in view of Cooper (“Going going gone, Tradition gives way to technology, British Telecom World, March 1990).

As per claim 1, Fisher substantially discloses a system/method for conducting a multi-person (or in-person), interactive auction, the method comprising the steps of:

updating bidding information associated with an item in an online environment to reflect a current bid associated with the item, in person auction (see., col 8, lines 39-55, specifically wherein it is stated that updating the bid list for open items. The bid manager begins by checking if there are more merchandise items to be processed. If such items are found, the bid manager selects a merchandise item to process and queries the bid database for bids for this items);

accepting a bid from an online bidder in the online environment reflecting the online bidder’s maximum proxy price (see., col 8, lines 61-67, specifically wherein it is stated that the auction manager will increase the bid as necessary up to the limit amount. The feature allows the customer to get the lowest possible price without exceeded a limit preferably. Applicant should duly note that a proxy bid or maximum proxy bid is a special bid type that allows auction manager to automatically bid on the bidder’s behalf up to a limited amount established by the bidder when his or her initial bid is placed); and

bidding on behalf of the online bidder against one or more bidders that are participating in the in-person auction based upon the maximum proxy price (see., col 8, lines 56-67, col 9, lines 1-6, specifically wherein it is stated that a proxy bid is a special bid type that allows auction manager to

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automatically bid on the bidder's behalf up to a limited amount established by the bidder when his or her initial bid is placed).

It is to be noted that Fisher does not explicitly disclose that his auction is a live auction. However, **Cooper** discloses bidders from remote bid against participant in a live auction (see., page 1, paragraph 9-10) . Accordingly, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the online bidding auction of **Fisher** by include the live auction taught by **Cooper** because such modification would provide the online bidding auction of **Fisher** with the enhanced necessary to have the benefit of broadening audience and cost saving.

As per claim 2, Fisher discloses the claimed method wherein said bidding on behalf of the online bidder comprises bidding an amount that exceeds the current bid so long as the amount does not exceed the maximum proxy price, and so long as the current bid is not that of the online bidder (see., col 8, lines 56-67, col 9, lines 1-6).

Claim Objections

5. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

REASONS FOR ALLOWANCE

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The prior art of record do not teach or suggest alone or in combination: “prior to the live, in -person auction, establishing a starting bid for the item by performing a pre-auction bidding process in the online environment for a predetermined amount of time, and communicating the starting bid for the item to the live, in-person auction”.

Allowable Subject Matter

6. Claims 4-6 are allowed over the prior art of record.

REASONS FOR ALLOWANCE

The prior art of record do not teach or suggest alone or in combination: “prior to the live, in -person auction, establishing a starting bid for the item by performing a pre-auction bidding process in the online environment for a predetermined amount of time, and communicating the starting bid for the item to the live, in-person auction”.

Response to Arguments

7. Applicant's arguments with respect to claims 1 and 2 have been considered but are moot in view of the new ground(s) of rejection. NECESSITATED BY IDS filed on 8/29/2202, paper # 19.

REMARKS

8. In response to claims 1 and 2, Applicant argues that the prior art of record do not teach or suggest alone or in combination:

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a. "Fisher clearly teaches away from an environment in which a human auctioneer is used to conduct the auction". However, the Examiner respectfully disagrees with the Applicant's representative because Fisher (5,835,890) discloses a system/method for conducting a multi-person (or in-person), interactive auction, in a variety of formats see., col 6, lines 3-13, and therefore, the multi-person or in-person is seen to read as an in -person or a human auctioneer to conduct the auction.

b. "Maximum proxy price". AS specified by the Examiner in the Office action mailed on 6/4/2202, this limitation is disclosed by Fisher (5,835,896) in col 8, lines 56-67, col 9, lines 1-6, specifically wherein it is stated that a proxy bid (or maximum proxy price) is a special bid type that allows auction manager to automatically bid on the bidder's behalf up to a limited amount established by the bidder when his or her initial bid is placed).

CONCLUSION

9. Applicant's submission of an information disclosure statement under 37 CFR 1.97© with the fee set forth in 37 CFR 1.17(p) **on 8/29/2002** prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609(B)(2)(I). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the

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date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

10. Any inquiry concerning this communication from the examiner should be directed to Pierre Eddy Elisca at (703) 305-3987. The examiner can normally be reached on Tuesday to Friday from 6:30AM to 5:00PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9769.

Any response to this action should be mailed to:

Commissioner of Patents of Trademarks

Washington, D.C. 20231

or faxed to:

(703) 308-9051, (for formal communications intended for entry)

OR

(703) 305-9724, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth floor (receptionist).

The Official Fax Number For TC-3600 is:

Serial Number: f9/ 457,466

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(703) 305-7687



Pierre Eddy Elisca

Patent Examiner

October 08, 2002